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**From:**

**Sent:** Monday, May 24, 2010 5:21:33 PM

**To:**

**Cc:**

**Subject:** RE: Refund Interest Claim

I don't think that it makes sense to consider the \$ as part of the payment that is now able to be refunded, because the transfer of the credit to then made the taxpayer eligible to make a claim for credit or refund for within two years of that credit - logically, it seems that the ability to file a claim for refund based on both credits to be double dipping (even if taxpayer had no real reason to file one for ).

The best authority I could find (the facts are not analogous but the court looks at the meaning of payment under 6511(b)(2)(B)) was Carroll v. United States, 339 F.3d 61 (2nd Cir. 2003), where the court, applying the look back rule, held that while the refund claim contested only the penalty and not the underlying tax assessment, and the payment within two years of the claim was applied to both the tax liability and the penalty, the entire amount paid within two years of the claim could be refunded. The court stated that for purposes of section 6511(b)(2)(B), the tax paid is **the sum of taxes, penalties, and interest paid for the tax year in question**. In your case, I would argue that the (\$) transferred out *reduces* the gross sum paid within the two year period, especially as the credit and the transfer out appear to have occurred in the same week.